

ORIGINAL

OPEN MEETING AGENDA ITEM



0000167109

J. Alan Smith, Private Citizen
600 S. Oak Street, Space 4
Payson, Arizona [PZ 85541]
(928) 951-2083 Wk.

PWC Utility Account No. 61138-24899
In Propria Persona

RECEIVED

2015 DEC -1 P 12: 34

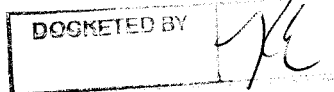
COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB BURNS, Commissioner
DOUG LITTLE, Commissioner
BOB STUMP, Commissioner
TOM FORESE, Commissioner

Arizona Corporation Commission

DOCKETED

DEC 01 2015



AZ CORP COMMISSION
DOCKET CONTROL

Before the Arizona Corporation Commission

J. Alan Smith, Injured Party

Complainant,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.

Respondents.

DOCKET NO. W-03514A-12-0007

**MOTION FOR AN EXTENSION
OF TIME TO RESPOND AND
FILE EXCEPTIONS TO THE
RECOMMENDATIONS OF
THE ADMINISTRATIVE LAW
JUDGE TO THE COMMISSIONERS**

NOW COMES, the Complainant J. Alan Smith, pursuant to A.A.C. R14-3-110 (B) for an extension of time and to continue the required response date of December 2, 2015 at 4:00 p.m. to file exceptions to the recommendations of the Administrative Law Judge to the Commissioners and to continue hearing by the Commissioners for an additional Thirty (30) to Sixty (60) Days for the following reasons:

1. The Administrative Law Judges recommendations (63 pages) are dated November 23, 2015 and mailed to the Complainant on the same day;
2. Complainant only received the recommendations on November 28, 2015;
3. Complainant is required to respond by December 2, 2015 at 4:00 p.m. where in fact Complainant is not even given Ten days to respond by the required date of December 2, 2015 or to prepare a proper response and file exceptions to the recommendations or to prepare for a hearing on December 8th and 9th, 2015;
4. The Administrative Law Judge has taken nearly One year to make her recommendations to the Commissioners where in fact such recommendations should have been made after conclusion of the hearings on January 15th and 30th 2015 within Ninety days;
5. Throughout previous proceedings the Respondents showed nothing other than an arrogant and egotistical contempt for the Commission, its Administrative Law Judge and the Complainant by refusing to comply

with the Subpoena(s), Data Requests, requests for Discovery and Disclosure and intentionally ignored Procedural Orders;

6. The real concern here has been why have the Commissioners and Administrative Law Judge Nodes not acted appropriately and responded accordingly to their prescribe duties and responsibilities?

Pursuant to the Arizona Code of Judicial Conduct:

Cannon 3. A judge shall perform the duties of judicial office impartially and diligently.

Cannon 3 A (1). A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

Cannon 3 B (8). A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Cannon 3 B (8) Commentary.

"In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay."

Containing costs while preserving fundamental rights of parties, also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices avoidable delays and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Article 2 § 11 of the Arizona Constitution requires that "justice in all cases shall be administered openly, and without unnecessary delay."

Article 6, § 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The Supreme Court shall by rule provide for the speedy disposition of all matters not decided within such period."

"The administrative law judge's role is analogous to that of a trial judge. As such, the ALJ is vested with comparable hearing and decision powers." **Fulwood v. Heckler, 594 F. Supp. 540, 547 (D. D. C. 1984).**

"Administrative Law Judges are not limited to the position of referee between contending parties; their function is "to see that facts are clearly and fully developed." "They are not required to sit idly by and permit a confused or meaningless record to be made." **Bethlehem Steel Co. v. NLRB, 120 F.2d 641, 652 (D. C. Cir. 1941).**

"The court held that by disregarding those precedents, the Commission had acted arbitrarily and capriciously. The Commission may not decide a case one way today and a substantially similar case another way tomorrow." **Doubleday Broadcasting Co. v. FCC, 655F.2d417, 423 (D. C. Cir. 1981).**

"There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." **Mary Carter Paint Co. v. FTC, 333 F.2d 654, 660 (5th Cir. 1964).**

"The courts are increasingly requiring agencies that change their minds to explain why, through a reasoned analysis indicating that prior policies are being deliberately changed." **Moltenry v. Bond**, 668 F.2d 1185 (11th Cir. 1982); **Gaton Rouge Contractors v. FMC**, 655 F.2d 1210 (D. C. Cir. 1981).

There was never established a final due date for the conclusion of Discovery and Disclosure as the Respondents, the Commission, the Administrative Law Judge are formally and knowingly aware.

The Complainant's Data Requests, demands for compliance with issued Subpoenas and other requests for Discovery and Disclosure materials can not be shown nor construed to be invalid or untimely filed as the Respondents have or would misrepresent.

Respondent "may not claim privilege for corporate records, in every such case the records kept are not within the protection of the self-incrimination privilege." **Shapiro v. United States**, 335 U. S. 1, 58 (1948) "required records are also not protected by the 5th Amendment privilege against self-incrimination **Craib v. Bulmash**, 777, P.2d 1120 (Cal. 1989) "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restriction validly established" **Shapiro v. United States**, 335 U. S. 1, 58 (1948) *Id* at 33.

"Agency subpoena power is not confined to those over whom it may exercise regulatory jurisdiction, but extends to any persons from whom it can obtain information relevant and material to its legitimate inquiry." **FCC v. Cohn**, 154 F. Supp. 899, 906 (S.D.N.Y. 1957).

"For an agency to exercise subpoena power, it need not show that it has regulatory jurisdiction over the person subpoenaed." **Freeman v. Fidelity-Philadelphia Trust Co.**, 248 F. Supp. 487 492 (E.D. Pa. 1965).

"Testimony and records pertinent to a legitimate investigation may be subpoenaed even though the subpoena is directed to a third person who is not subject to the agency's jurisdiction and who is not the subject of the investigation." **United States v. Marshall Durbin & Co.**, 363 F.2d 1 (5th Cir. 1966); **Freeman v. Brown Bros. Harriman & Co.**, 357 F.2d 741 (2d Cir. 1966).

"All that is necessary is that the records be relevant to an investigation that is within the agency's authority." **Redding Pine Mills v. State Bd.**, 320 P.2d 25 (Cal. App. 1958) **State v. Mees**, 49 N.W.2d 386 (Minn. 1951).

"The unduly broad scope of an administrative subpoena may no longer be set up as a defense in the enforcement proceeding." **FTC v. Crafts**, 355 U.S. 9 (1955) and **Pope & Talbot v. Smith**, 340 P.2d 960 (Ore. 1959).

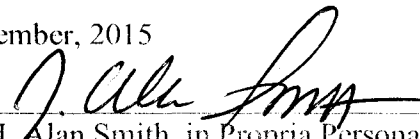
"Broadness alone is not sufficient justification to refuse enforcement of a subpoena." **FTC v. Texaco**, 555 F.2d 862, 882 (D. C. Cir. 1977).

"The fact that compliance might call for thousands of documents is not enough to show the subpoena is unduly burdensome." **NLRB v. G.H.R. Energy Corp., 707 F.2d 110 (5th Cir. 1982).** The very purpose of the administrative subpoena is to discover and procure evidence, not to prove a pending case, but to make a case if, in the agency's judgment, the facts thus discovered should justify doing so. **EEOC v. Bay Shipbuilding Corp., 668 F.2d 304,312 (7th Cir. 1981).**

Respondents refused to comply with the Subpoena, Data Requests, Discovery and Disclosure without justification and the Administrative Law Judge and the Commissioners failed in their prescribed duties and authority and failed to properly impose compliance and sanctions.

The Complainant for all of the reasons, stated herein and above requests of the Commission and the Administrative Law Judge to continue the dates of hearing now scheduled for December 8th and 9th, 2015 and grant an extension of time to the Complainant to file exceptions to the recommendations of the Administrative Law Judge to the Commissioners in these matters.

Respectfully submitted this 30th day of November, 2015


J. Alan Smith, in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Motion have been mailed this 30th day November, 2015 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

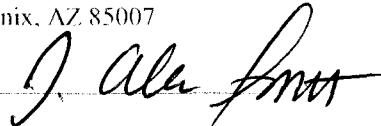
Copies of the foregoing Motion have been mailed this 30th day November, 2015 to the following:

Jason Williamson, President
PAYSON WATER CO., INC.
7581 East Academy Boulevard, Suite 229
Denver, CO 80230

Robert T. Harcastle
P. O. Box 82218
Bakersfield, Ca. 93380

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Thomas Broderick, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

By: 

Motion for an Extension of Time to Respond and Prepare